

'511 application") with a copy of the declaration from the '511 application. Thus, in accord with 37 C.F.R. § 1.63(d)(1)(iv) and MPEP § 602.05(a), a new declaration is not required.

## **II. Double Patenting**

Claims 1-23 stand rejected under the judicially created doctrine of obviousness-type double patenting as allegedly being unpatentable over claims 1-21 of U.S. Patent No. 5,756,281 ("the '281 patent).

In order to expedite prosecution and advance the case towards issuance, Applicant has enclosed herewith a terminal disclaimer over the '281 patent). In view of the above, Applicant respectfully requests that the Examiner reconsider and withdraw this rejection.

## **III. The Section 102 Rejections**

Claims 1-6 and 13-25 stand rejected under 35 U.S. C. § 102(a) as allegedly being anticipated by Martin (A).

Applicant respectfully submits that the reference cited by the Examiner is not properly available as prior art against the present application under 35 U.S.C. § 102(a).

Applicant notes that anticipation under 35 U.S.C. § 102(a) requires that the invention was known or used by others in this country or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent. Here, the reference cited by the Examiner (U.S. Patent No. 5,703,221; "the '221 patent") is by the same inventor as

named for the present application and thus is not by "others". Furthermore, in view of the priorities claimed in the present application, the '221 patent is not available before the date of invention of the present claims.

In view of the above, Applicant respectfully requests that the Examiner reconsider and withdraw the rejection.

#### **IV. The Section 112 Rejections**

Claims 1-6 and 7-25 stand rejected under 35 U.S.C. § 112, second paragraph, as allegedly being incomplete for omitting essential steps. The claims allegedly appear to be missing a step of detecting or culturing a stealth virus. With respect to claim 7, the Examiner argues that the claim lacks a nexus between the sample used to inoculate the permissive cell line and the stealth virus. In order to expedite prosecution and advance the case towards issuance, Applicant has amended claims 1 and 7 to clarify that the stealth virus is detected or cultured and to clarify that the sample contains a stealth virus..

Claims 6, 11, 12, and 20 stand rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite for use of the term "derived". In order to expedite prosecution and advance the case towards issuance, Applicant has amended the claims to use the term "isolated" as suggested by the Examiner.

Claim 12 stand rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite for use of the term "environmental substance". In order to expedite prosecution

and advance the case towards issuance, Applicant has amended the claim to delete the offending term.

Claims 14 and 20 stand rejected under 35 U.S.C. § 112, second paragraph, as allegedly lacking antecedent basis. In order to expedite prosecution and advance the case towards issuance, Applicant has amended the dependency of these claims and thereby provide proper antecedent basis for the terms in question.

Claims 24 and 25 stand rejected under 35 U.S.C. § 112, second paragraph, as allegedly being indefinite. In order to expedite prosecution and advance the case towards issuance, Applicant has amended the dependency of these claims and thereby clarify the issues raised by the Examiner.

In view of the above, Applicant respectfully requests that the Examiner reconsider and withdraw this rejection.

### **CONCLUSION**

Accordingly, the claims are now in condition for allowance and a notice to that effect is respectfully requested.

Pursuant to 37 C.F.R. §1.136, applicant hereby petitions for a three-month extension of time to take action in response to the final Office Action mailed September 1, 1998. This extension of time is effective to allow timely filing up to and including March 1, 1999.



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If there is any fee due in connection with this response, please charge Deposit  
Account No. 12-2475 for the appropriate amount.

Respectfully submitted,

LYON & LYON LLP

By: \_\_\_\_\_

A handwritten signature in dark ink, appearing to be "C. Berkman", written over a horizontal line.

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